

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Public Interest Obligations)
of TV Broadcast Licensees)

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MM Docket No. 99-360

COMMENTS OF

OFFICE OF COMMUNICATION, INC. OF THE UNITED CHURCH OF CHRIST
ALLIANCE FOR COMMUNITY MEDIA
ASSOCIATION OF INDEPENDENT VIDEO AND FILMMAKERS
BENTON FOUNDATION
BLACK CITIZENS FOR A FAIR MEDIA
CENTER FOR MEDIA EDUCATION
CONSUMERS UNION
MINORITY MEDIA TELECOMMUNICATIONS COUNCIL
NATIONAL ASSOCIATION OF THE DEAF
WOMEN'S INSTITUTE FOR FREEDOM OF THE PRESS, (UCC *et al.*)

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SUMMARY

UCC *et al.* collectively represent a broad spectrum of the viewing and listening public. As such, UCC *et al.* have a strong interest in ensuring a diversity of sources of information about important local issues, maintaining an informed electorate, meeting the educational and informational needs of children and making sure that digital television is accessible to all. Digital television broadcast licensees have a statutory obligation to provide their communities with programming that serves the public interest. 47 U.S.C. §§ 307(b), 309, 336(d).

UCC *et al.* urge the Commission to issue a Notice of Proposed Rulemaking ("NPRM") no later than August 2000 proposing public interest obligations for digital broadcasters. The Commission should then act expeditiously to adopt such rules so that the public can truly benefit from the opportunities presented by digital television ("DTV"). To ensure that digital licensees adequately serve the public interest, UCC *et al.* urge the Commission to propose and adopt the following five recommendations:

First, UCC *et al.* recommend that the Commission establish quantitative minimum public interest requirements for all digital broadcast licensees. Adopting minimum requirements is an integral component of translating existing public interest obligations to the digital environment. A broadcast licensee has a fundamental duty to air programming responsive to the needs of its community. This principle is too important to leave to the vicissitudes of the market, especially in light of evidence that continues to demonstrate that some broadcasters are not meeting this responsibility. The Commission must adopt minimum standards to ensure that all licensees serve this vital role. Despite the emergence of new media outlets, such as cable, DBS and the Internet, broadcast television remains the principal source of information on issues of local public

importance.

To secure the public's informational rights, the Commission should adopt programming guidelines for local news and public affairs, candidate centered discourse and programming furthering self-governance, and children's educational programming. The Commission also should expand minimum closed captioning requirements to encompass all public interest programming and phase in video description to enhance access for persons with disabilities. In addition, the Commission should strengthen broadcasters' equal employment opportunity outreach and recruitment obligations. Lastly, the Commission should require digital broadcasters to file periodic reports with the FCC detailing how they have met these obligations.

Second, the Commission should develop additional public interest obligations commensurate to a digital broadcaster's enhanced capability to multicast. The current rules, based on the assumption that a licensee provides a single channel of programming, will not satisfy the public's needs in the digital environment. These additional obligations should be flexible, enabling the digital licensee to determine how best to serve its community should it choose to multicast. UCC *et al.* propose that the Commission offer broadcasters three options to satisfy their enhanced public interest obligations: 1) provide additional public interest programming; 2) lease a portion of the spectrum to a small disadvantaged business or noncommercial educational producer; or 3) pay a fee to support local noncommercial educational programming.

Third, the Commission should specifically apply certain existing public interest obligations to all program services, including ancillary and supplemental program services. In particular, the Commission should ensure that a digital licensee meet its candidate access rights

and children's advertising requirements on all program services, whether free or pay.

Fourth, the Commission should ensure that the public interest is served on all non-programming ancillary and supplemental services. Digital broadcasters could meet their public interest obligations by providing a certain amount of datacasting services to local schools and libraries and non-profit community organizations. The Commission should also explore the possibility of allowing digital licensees to meet their public interest obligations on ancillary services by providing broadband Internet access to needy schools, libraries, and/or community centers. In addition, the Commission must ensure that all ancillary and supplemental services, programming and non-programming, are accessible to the disabled.

Finally, the Commission should take action to ensure that broadcasters do not use DTV's interactive capabilities to invade consumer privacy and take advantage of children. To protect consumer privacy, the Commission should adopt a rule preventing DTV broadcasters from collecting personal information unless consumers "opt-in" after adequate notice.

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The Office of Communication, Inc. of the United Church of Christ, Alliance for Community Media, Association of Independent Video and Filmmakers, Benton Foundation, Black Citizens for a Fair Media, Center for Media Education, Consumers Union, Minority Media Telecommunications Council, the National Association of the Deaf, and the Women's Institute for Freedom of the Press, ("UCC *et al.*") by their attorneys, the Institute for Public Representation and the Media Access Project, respectfully submit this comment in response to the Federal Communications Commission's Notice of Inquiry on the Public Interest Obligations of TV Broadcast Licensees, FCC 99-360 (rel. Dec. 20, 1999) ("*NOI*").

UCC *et al.* collectively represent a broad spectrum of the viewing and listening public. As such, UCC *et al.* have a strong interest in ensuring a diversity of sources of information about important local issues, maintaining an informed electorate, meeting the educational and informational needs of children and making sure that digital television is accessible to all. Broadcast licensees have a statutory obligation to provide their communities with programming that serves the public interest. 47 U.S.C. §§ 307(b), 309, 336(d). UCC *et al.* urge the Commission to issue a Notice of Proposed Rulemaking ("*NPRM*") no later than August 2000 proposing public interest obligations for digital broadcasters. The Commission should then act

expeditiously to adopt such rules so that the public can truly benefit from the opportunities presented by digital television ("DTV").

I. THE COMMISSION SHOULD ACT NOW TO PROPOSE AND ADOPT COMPREHENSIVE PUBLIC INTEREST REQUIREMENTS.

It is time for the Commission to set the ground rules for how digital broadcasters will serve the public interest. Even if the specific nature of all new services and the exact speed of deployment is uncertain, the Commission has sufficient information regarding the likely services digital broadcasters may offer to set the basic ground rules for public service. Furthermore, the speed of deployment makes delay untenable -- the Commission should not ask the public to wait for the public service owed to it by digital broadcasters, while digital broadcasters reap the rewards of the spectrum granted to them for free. Contrary to the arguments of some groups, defining digital broadcasters' public interest obligations will neither stifle development of innovative services nor retard deployment. Broadcasters also have been on notice since 1996 that, as trustees of the public spectrum in the digital age, they will have to provide for the public interest on all their digital services. Thus, UCC *et al.* ask the Commission to issue an NPRM on the public interest obligations of digital licensees as soon as possible, but no later than August 2000.

A. As Public Trustees, Broadcasters Must Use the Digital Spectrum's Enhanced Capabilities to Better Serve the Public Interest.

In the 1996 Telecommunications Act, Congress affirmed over sixty years of Court and Commission history establishing that a broadcaster must air programming responsive to the

needs of its community.¹ Digital broadcasters were granted licenses to use the spectrum in exchange for public service. *See* 47 U.S.C. § 336(d). In fact, during the hearings leading up to the Act, high level industry officials repeatedly rebuffed any notion of a digital spectrum fee, arguing that it would violate the "social compact" between the public and the broadcasters. *See* Henry Geller, *Implementation of "Pay" Models and the Existing Public Trustee Model*, in DIGITAL BROADCASTING AND THE PUBLIC INTEREST 227, at 233 (1998).

Because of their status as trustees, broadcasters received special treatment in the transition to digital. Only incumbent licensees were given the opportunity to obtain digital broadcast licenses. *See* 47 U.S.C. § 336(a)(1). Although other parties who seek to use the spectrum have to compete in auctions to obtain a license, digital broadcasters are specifically exempted from any competition. *See* 47 U.S.C. § 309(j)(2)(B). In addition, other parties must pay to use the spectrum, whereas broadcasters were not required to pay one cent for a public resource worth an estimated 70 billion dollars. With all the new capabilities and additional sources of revenue inherent in DTV, there is only one clear beneficiary of the transition to digital at the moment: the DTV broadcasters themselves. The Commission must adopt public interest

¹ *See* 47 U.S.C. §§ 336(d), 307(b), 309; *CBS v. FCC*, 453 U.S. 367 (1981); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 364 (1969); *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966); *Pinellas Broadcasting Co. v. FCC*, 230 F.2d 206, 306, *cert. denied*, 350 U.S. 1007 (D.C. Cir. 1956); Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Requirements for Commercial Television Stations, *Report and Order*, 98 F.C.C. 2d 1076 (1984) ("*Revision of Programming Commercialization Policies*"); Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 20 Rad. Reg. 1901 (1960) ("*1960 Programming Policy Statement*").

obligations now to ensure that the public, as well as the broadcasters, will benefit from the transition to digital television.

B. Establishing Ground Rules Sooner Rather than Later Benefits Broadcasters As Well As the Public.

It is more equitable to broadcasters and the communities they serve to determine from the beginning exactly what will be expected from digital licensees in the near future. Broadcasters are well aware that they are required to serve the public interest and have been "on notice that the Commission may adopt new public interest rules for television." Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, 12830 (1997) ("*Fifth Report and Order*"). By adopting rules now that establish public interest obligations, broadcasters will be better able to plan to meet those obligations. As one of the broadcasters on the Advisory Committee noted, "[i]n return for a license to use a public asset for private financial gain, a broadcaster agrees to serve the public interest . . . *As with all contracts, both parties to the agreement need to know exactly the responsibilities that they have to each other.*" Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* (1998) ("*Advisory Committee Report*"), Separate Statement of James Goodmon at 86 (emphasis in original).

Public interest obligations are absolutely necessary for the public good. Broadcasters are charged with informing the citizens of their communities of issues of local and national importance. This responsibility is fundamental regardless of whether the licensee is transmitting

in analog or digital. The fact that technology is evolving is no excuse for declining to adopt baseline public interest obligations for digital television. There are areas where the Commission knows from experience that the market will fail to serve the public interest and the Commission will need to step in. *See, e.g., ACT v. FCC*, 821 F.2d 741, 745 (D.C. Cir. 1987) ("[t]he FCC's regulation of children's television was founded on the premise that the television marketplace does not function adequately when children make up the audience.").

Regulatory certainty will not stifle innovation; rather, it will encourage broadcasters to move forward. With the knowledge of what is expected from them up front, DTV licensees can tailor their use of the spectrum accordingly. This is preferable to having to impose public interest obligations after DTV broadcasters have become entrenched.

C. The Commission Has Sufficient Knowledge of How Broadcasters Will Use their Digital Capacity to Establish a Flexible and Fair Regulatory Scheme.

Notwithstanding that the specific nature of all new services and the exact speed of deployment is uncertain, the Commission has sufficient information regarding the likely services digital broadcasters may offer to establish the baseline for public service.² As the Commission has made clear, DTV broadcasters will provide at least one free channel comparable to the one on which the public has come to rely. *See Fifth Report and Order*, 12 FCC Rcd at 12820. In addition, it is also clear that most broadcasters will provide some conventional, albeit enhanced, television services, either on HDTV or multicasted as SDTV. *See Digital Television '99:*

² *See Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Dkt. No. 97-247, *Memorandum Opinion and Order*, FCC 99-362, at ¶ 13 (rel. Nov. 24, 1999) (discussing how "broadcasters are not venturing into completely uncharted territory" with respect to the provision of ancillary services).

Navigating the Transition in the US, <<http://www.nab.org/Research/Reports/DIGITALTV.htm>> (last visited Mar. 17, 2000). With the interactive potential of DTV, broadcasters can target advertisements and insert hyper-links into programming and ads to allow viewers to directly purchase products. In fact, many digital broadcasters and digital cable providers have already begun experimenting with this technology. See discussion *infra*, Part VI.

DTV allows for a broad range of datacasting services.³ With the ability to datacast, "the broadcast television industry can readily participate in [the] rapidly emerging bandwidth marketplace." ⁴ According to one NAB senior vice president, "anything distributed over the Internet can be distributed via broadcast television" and "broadcasters are favored with several Internet competitive advantages, including currently deployed network, wireless distribution, ubiquity in the local market, cost-effectiveness in scale and the ability to support IP multicasting." See Ducey, *supra* note 3. In sum, DTV licensees will use the spectrum to broadcast in HDTV, to multicast in SDTV, to provide Internet or other data services or, more than likely, some combination of all the above.⁵

³ See generally, Richard V. Ducey, *Internet +DTV Broadcasting = UN-TV*, <<http://www.nab.org/research/Reports/DTV-Internet.asp>> (last visited Mar. 9, 2000) (discussing the wide array of non-traditional services DTV can provide such as offering Internet bandwidth and DTV's market advantages in this area). See also *Digital Television '99: Navigating the Transition in the US*, <<http://www.nab.org/Research/Reports/DIGITALTV.htm>> (last visited Mar. 17, 2000).

⁴ See Ducey, *supra* note 3. In fact, broadcasters are already forming partnerships to enter the digital datacasting arena. See Glen Dickson, *IBlast Makes Datacast Splash*, BROADCASTING AND CABLE, Mar. 13, 2000, at 62; Jon Healey, *Co-op Offers Airwave Action*, <<http://www.mercurycenter/news/indepth/docs/bcast032200.htm>> (last visited Mar. 24, 2000).

⁵ Any public interest obligations the Commission adopts are reviewable if changed circumstances should arise. The public interest standard is a supple instrument that the Commission can modify

Thus, the Commission has an adequate basis to adopt a regulatory scheme that ensures that the public benefits from the broadcasters' use of the public airwaves. The public has entrusted digital licensees with an incredibly valuable resource, and the broadcasters must act as trustees to use that resource in the interest of the public. The Commission should not ask the public to wait for the public service owed to it by digital broadcasters, while digital broadcasters reap the rewards of the public spectrum. The number of stations broadcasting in digital recently topped 120, covering over 60% of all television households. *See Two More Television Stations Go Digital, NAB Says*, <<http://www.nab.org/newsroom/pressrel/Releases/1400.asp>>(last visited Mar. 17, 2000). At this pace, broadcasters are likely to meet the 2002 deadline for construction of digital stations. *See Id.*

The Commission should not sit idly by as the industry transfers into digital. Congress has entrusted to the Commission the duty to ensure that this valuable resource is used in the best interests of the public. The Commission should issue an NPRM proposing digital licensee's public interest requirements by August 2000 and should quickly move to adopt the rules. The following sets forth four recommendations to aid the Commission in this task.

II. THE COMMISSION SHOULD ESTABLISH CLEAR MINIMUM PUBLIC INTEREST REQUIREMENTS AND GUIDELINES.

The NOI notes that "[b]oth the Act and the Commission's implementing regulations make it clear that DTV broadcasters must continue to serve the public interest." *NOI* at ¶ 10. We agree. As a public trustee, all of a digital broadcaster's uses of the spectrum must be in the public interest. *See* 47 U.S.C. § 336(d). In light of the "new capabilities in digital technology,"

as technology or social needs require. *See CBS v. DNC*, 412 U.S. 94, 118 (1973).

the initial question the NOI asks is "how existing public interest obligations should translate to the digital medium." *NOI* at ¶ 10. As part of the translation to digital, the NOI seeks comment on whether the Commission should establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations. *See NOI* at ¶ 22.

A broadcast licensee has a fundamental obligation to air programming responsive to the needs of its community.⁶ The purpose of this core public interest programming obligation is to ensure that anyone with a television set has free access to a minimum level of programming responsive to a community's informational needs concerning local affairs, self-governance and educational programming, especially children's programming. Because this programming is so important, the broadcaster has an obligation to make it accessible to all Americans.

As part of the translation of existing obligations to the digital environment, *UCC et al.* urge the Commission to adopt specific quantitative minimum requirements concerning a digital licensee's programming obligations. A digital broadcaster's duty to provide programming responsive to the needs of its community of service is far too important to leave to the vicissitudes of the market. Clear guidelines setting forth the minimum amount of public affairs programming that a digital licensee must provide will ensure that members of the public have access to the programming necessary to be informed and active citizens of their communities.

⁶ *See supra* note 1 and accompanying text. The importance of broadcasters covering significant local issues stems from the long-standing principle that because broadcasters are licensed to use a public space (the spectrum) for free, they should in turn serve the public as trustees of the spectrum. *See* 47 U.S.C. § 307(b); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 364, 380 (1969). *See generally Advisory Committee Report* at 17- 42 (discussing the history of the public interest standard and a broadcaster's duty to air programming addressing its community's informational and educational needs).

UCC *et al.* propose that the Commission establish specific guidelines concerning locally originated and oriented programming, political discourse, closed captioning, and children's educational programming.⁷ Specifically, we urge the Commission to require: 1) three hours per week of local news and three hours per week of locally oriented programming outside of local news; 2) a reasonable amount of meaningful free time to federal and local candidates to enhance political discourse; 3) closed captioning on all public interest programming and the phasing in of video description to enhance disability access; and 4) minimum equal employment opportunity (EEO) recruitment and reporting requirements for DTV broadcasters. Additionally, the Commission must adopt meaningful disclosure requirements to enable the Commission and the public to easily determine if broadcasters are satisfying their public interest duties.

A. Minimum Public Interest Requirements are Necessary to Ensure that All DTV Licensees Air Programming Responsive to the Needs of their Communities.

The NOI asks if "there are sufficient marketplace incentives to ensure the provision of programming responsive to community needs, obviating the need for additional requirements." NOI at ¶ 22. The NOI also seeks comments on the costs and benefits of adopting minimum requirements for DTV licensees. *See id.* As discussed below, minimum quantifiable guidelines are necessary to preserve the public interest and will benefit broadcasters as well as the communities they are required to serve.

⁷ With respect to the translation to digital of a broadcaster's core obligation to serve the educational and informational needs of the children of its community, we support the comments of CME *et al.* in this proceeding.

Evidence continues to demonstrate that some broadcasters simply do not meet their obligations to their communities. As the NOI noted, "an April 1998 Joint Report by the Media Access Project and the Benton Foundation found that, in the markets examined, 35% of the stations provide no local news, and 25% offer neither local public affairs programming nor local news." *NOI* at ¶ 36.⁸ Over the last two years, coverage of local issues has not improved. In January 2000, over a two week period, the Benton Foundation conducted another study of 112 broadcast stations.⁹ The study found that only 0.3% of total programming qualified as local public affairs programming. *See Napoli, supra* note 9, at 3. Adding national news coverage to the equation only raised the total to 1.06% of total broadcast hours. *See id.* In contrast, from 1973 to 1979, when the FCC did have programming guidelines, local public affairs programming made up on average 4.6 percent of station programming. *See Revision of Programming and Commercialization Policies*, 98 F.C.C. 2d at 1081. The Commission cannot allow the market to continue this downward trend into the digital age.

Minimum quantified public interest obligations address these market deficiencies by requiring that all licensees meet a minimum level of public service. Broadcasters have a core obligation to inform the public on issues of local importance and political discourse. This

⁸ Another study of newscasts in the Denver area revealed that actual news coverage averaged less than half of the programs. *See Rocky Mountain Media Watch, 1998 Survey: Not in the Public Interest*, <<http://www.bigmedia.org/texts5.html>> (last visited Mar. 13, 2000). Fifteen of the stations surveyed broadcast more commercials than news during their newscasts. *See Id.* *See also* Dan Trigoboff, *News Not Paramount*, BROADCASTING AND CABLE, Dec. 7, 1998, at 30 (four Paramount stations have eliminated newscasts for budgetary reasons).

⁹ *See Philip M. Napoli, Ph.D., Market Conditions and Public Affairs Programming: Implications for Digital Television Policy*, at 2 (Mar. 2000) (submitted in this proceeding by the Benton Foundation and People for Better TV).

responsibility is essential to the functioning of an informed community and self-governance. It is too important to rely on the voluntary efforts of some responsible broadcasters. Each individual licensee agreed to serve the public interest in exchange for the use of the spectrum and thus minimum requirements are necessary to ensure that all licensees honor that obligation.

Moreover, clear, minimum requirements are fair. Numerous broadcasters "do not view these minimum standards as *regulation*." *Advisory Committee Report*, Separate Statement of John Goodmon at 86 (emphasis in original). Responsible broadcasters acknowledge that minimum requirements merely spell out how "[t]he broadcast company [can] fulfill[] a contract between itself as the user of a public asset and the public body that owns the asset." *Id.* The Commission owes a duty to the broadcasters who take their responsibility as public trustees seriously to make clear what is expected of a digital licensee. *See NOI*, Separate Statement of Commissioner Tristani, at 3. Failure to do so rewards the broadcasters who have neglected their public interest obligations, while discouraging those who have not.

Clear rules will also make the license renewal process more meaningful and certain. Adopting specific guidelines to ensure that broadcasters are meeting their obligations to their communities would enable the Commission to adequately determine whether a broadcaster's license has met the standards for renewal. Specific guidelines would therefore give substance to the Congressional requirement that broadcasters serve their local communities. *See* 47 U.S.C. §§ 307(b), 309(k).

For all of the aforementioned reasons, UCC *et al.* agree with the Advisory Committee that the Commission should adopt minimum public interest obligations for digital broadcasters. *See Advisory Committee Report* at 47-48. UCC *et al.*'s specific proposals concerning local

programming and candidate centered discourse, as well as closed captioning and EEO obligations and public disclosure requirements, are set forth below.

B. The Commission Should Adopt Local Programming Guidelines to Ensure that All DTV Licensees Serve the Local Programming Needs of their Communities.

As discussed above, the core public interest responsibility of a broadcaster is to air programming responsive to the informational needs of its community.¹⁰ Notwithstanding the emergence of myriad media outlets, this responsibility remains extremely important because broadcast television is the only medium that is universally accessible to all Americans, is available for free, and provides locally originated and oriented programming. To ensure continued availability of accessible, free, local programming, the Commission should adopt processing guidelines requiring three hours per week of local news and three hours per week of locally originated or locally oriented public affairs programming.

1. Broadcast television remains the public's principal source of information concerning issues of local importance.

A broadcaster's duty to provide local programming is still as important as ever. Despite the explosion of media outlets over the last twenty years, broadcast television remains the most ubiquitous medium, penetrating nearly every household in the United States, available at no cost, and reaching all demographic groups. *See Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, FCC 99-209, at ¶ 40 (rel. Aug. 5, 1999) ("*Local*

¹⁰ *See supra* notes 1 & 6.

Ownership Order").¹¹ Americans spend more time watching TV every day than radio, Internet, newspapers and magazines combined. *See* COMM. DAILY (March 3, 2000).

More importantly, television broadcasting is still the primary source that the American public turns to for news and information. *See Local Ownership Order* at ¶ 40. And the fact remains that only broadcast television delivers genuine local news and programming to communities across the U.S. on a regular basis.¹² As the Commission has recognized, "local programming, particularly news and public affairs, is the single program service that . . . remains primarily the domain of local broadcasters." Office of Plans and Policy Working Paper, *Broadcast Television in a Multichannel Marketplace*, 6 FCC Rcd 3996, 4087 (1991). Although radio shares some qualities with broadcast television, it is not relied on as heavily as television for local news. *See Do You Read Me? More Media More Decisions*, *supra* note 12. Nor does radio offer significant amounts of local programming in light of the unprecedented wave of consolidation that has recently consumed the industry. *See* Andrew J. Schwartzman, *Viacom /CBS Merger: Media Competition and Consolidation in the New Millenium*, to be published in the forthcoming edition of the Federal Communications Law Journal.

Newer technologies - such as the Internet, cable and digital broadcast satellite (DBS) - are not universally available, are not free, and do not provide much original news or

¹¹ Statistics relied upon by the broadcasting industry show that 98% of U.S. households have at least one television receiver. *See* <<http://www.nab.org/Research/Ribriefs/Presentations/keio/sld004.htm>> (last visited Nov. 11, 1999).

¹² *See Americans Rely on Local Television News, Rate it Highly and Consider it Fair*, <http://www.rtndf.org/issues/survey/htm> (last visited Mar. 23, 2000); *Do You Read Me? More Media More Decisions*, <<http://www.ogilvypr.com/newsdesk/survey.html>> (last visited Mar. 23, 2000).

informational programming on local issues. Cf. G.B. Sohn and A.J. Schwartzman, *Broadcast Licensees and Localism: At Home in the 'Communications Revolution,'* 47 FED. COM. L.J. 383, 386 (Dec. 1994). First, new media outlets are not as widely available as television. Only broadcast television has near universal availability, reaching 98% of American homes. See *Local Ownership Order* at ¶ 40. Second, unlike these other media, broadcast television is the only medium that remains freely available to all Americans. Third, none of these new media offer a substantial amount of local programming.¹³ Thus, because broadcast television remains the only widely available and freely accessible medium that provides local programming, the FCC should adopt proceeding guidelines to secure this benefit for the public.

2. The Commission should adopt a processing guideline requiring three hours per week of local news and three hours per week of locally originated or locally oriented educational and/or public affairs programming outside of local news.

Accordingly, UCC *et al.* agree with the Advisory Committee conclusion that a "minimum commitment to public affairs programming should be required of digital broadcasters, again with some emphasis on local issues and needs." *Advisory Committee Report* at 48. Further, UCC *et*

¹³ A recent study indicates that the Internet does not provide an adequate, additional source of local news and information to communities. See Children's Partnership, *Online Content for Low-income and Underserved Americans: The Digital Divide's New Frontier*, at 4 (Mar. 2000). In addition, cable television operators generally do not provide much original, local programming; the few local programming that is available on cable is usually run by local newspapers or local television stations and much of the content simply duplicates material found elsewhere. See David Lieberman, *The Rise and Rise of 24-Hour Local News*, COLUM. L. REV. at 54 (Nov. 1, 1998). Some local programming is provided on public educational and governmental access channels when it is required by local franchises pursuant to 47 U.S.C. § 531. Lastly, as a nationwide service, DBS has never provided locally-originated programming to the public. Even now, DBS simply retransmits local programming to viewers in the limited areas where it is supplying local programming. See *Clinton Signs SHVA*, 19 COMM DAILY 229 (Nov. 30, 1999).

al. support the proposal set forth by eleven members of the Advisory Committee recommending that the Commission adopt processing guidelines based upon three hours per week of local news and three hours per week of locally originated or locally oriented educational and/or public affairs programming outside of local news. *See Advisory Committee Report, Separate Statement of Benton et al.* at 72.

To ensure that large segments of the community are exposed to this programming, the guidelines should include three prerequisites. First, the programming must be aired on a free channel.¹⁴ Second, the programming cannot be aired between 12:00 a.m. and 6:00 a.m. Third, at least one and a half hours of local news and locally oriented programming must be aired between 6:00 p.m. and 11:30 p.m. A broadcaster that airs this minimum amount of local programming would receive automatic approval of the portion of its license renewal application that addresses

¹⁴ One of the overarching goals of the transition to digital is to preserve and promote "*free*, local television service using digital technology." *Fifth Report and Order*, 12 FCC Rcd at 12820 (emphasis in original). The provision of public affairs programming concerning issues of local importance lies at the core of this free service. *See id.* In order to preserve this public interest programming, along with the other free entertainment services rendered by local broadcasters, the Commission concluded that "it will require broadcasters to provide on their digital channel the free-over-the-air-service on which the public has come to rely." *Id.* Thus, if a digital licensee provides only one channel, it must be freely available to the public and meet all of the licensee's minimum informational and educational programming obligations.

The NOI asks whether "a licensee has discretion . . . to air some of its public interest programming on more than one of its program streams." *NOI* at ¶ 11. *UCC et al.* believe that if a licensee decides to multicast, the Commission should allow the broadcaster to meet its public interest programming obligations on other program streams, so long as the programming meets the three conditions set forth above. This approach would grant broadcasters a reasonable amount of flexibility to air public interest programming. On a related point, the NOI asks if programming obligations should "attach to each program stream offered by the licensee." *NOI* at ¶ 11. In the multichannel environment, it may not be necessary to require public interest programming on every program service offered by a broadcaster. An across the board requirement of public interest programming on every program stream would discourage broadcasters from experimenting with various program lineups and schedules.

local programming. *Advisory Committee Report*, Separate Statement of Benton *et al.* at 72. This would make the license renewal process more efficient and certain.

Local programming guidelines give force to broadcasters' statutory obligation to serve their communities of license and are entirely consistent with "the core of this local licensing requirement . . . [that] broadcasters provide locally originated and locally oriented programming." *Advisory Committee Report* at 73.¹⁵ The proposal ensures that "broadcasters that provide little or no local programming do not benefit from the free grant of spectrum in the digital world." *Id.* It also "would not burden those broadcasters who already provide adequate amounts of local news and programming." *Id.* This proposal is not without precedent; in fact, it is very similar to the guidelines adopted by the Commission with respect to children's educational and informational programming. *See Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, Report and Order*, 11 FCC Rcd 10660, 10719 (1996).

C. The Commission Should Require DTV Licensees to Provide a Reasonable Amount of "Free Time" to National and Local Political Candidates under Conditions that Promote Discussion of Issues and Ideas.

In addition to providing locally originated and oriented public affairs programming, digital broadcasters should provide a minimum amount of candidate centered discourse in the period immediately prior to elections. As the NOI observes, "[t]he Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees

¹⁵ In fact, Congress has given broadcasters special treatment solely on the basis that they provide free local programming to the American public. *See* 47 U.S.C. §§ 521-529. *See also Advisory Committee* at 28.

to air programming regarding political campaigns." *NOI* at ¶ 34. The NOI seeks comment on ways in which candidate access to television and thus the quality of political discourse might be improved, and specifically seeks comment on the proposals of the Advisory Committee and others regarding candidate free time. *See NOI* at ¶¶ 34, 38.

1. A free time requirement is consistent with and furthers core First Amendment values.

UCC et al. urge the FCC to require broadcasters to provide free time for national, state and local political candidates. A minimum requirement of free time for all political candidates is essential to maintaining an informed electorate and furthering the First Amendment rights of the candidates and the citizens they wish to speak to. *See Red Lion*, 395 U.S. at 390 (citing *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)) ("[s]peech concerning public affairs is more than self-expression, it is the essence of self-government"). More and more candidates rely on television ads to get their message across to voters.¹⁶ And Americans still continue to cite television as one of their primary sources of election information.¹⁷

¹⁶ *See* Common Cause Report, *Channeling Influence: The Broadcast Lobby & the \$ 70 Billion Free Ride*, <http://www.commoncause.org/publications/040297_rpt6.htm> (1997); Paige Albinak, *Campaign 2000, The Color of Politics: Competitive Presidential Primaries and Congressional Races to Come Mean Big Bucks for TV, Radio*, BROADCASTING & CABLE, Feb. 28, 2000, at 20 ("Candidates are realizing what many traditional advertisers have known for a long time: Geographic target marketing on local TV stations can be a very effective advertising and promotional strategy.").

¹⁷ *See* Rebecca Fairley Raney, *Scholars Weigh Internet's Effect on Campaigns*, N.Y. TIMES, Dec. 4, 1998 (reporting that seventy-eight percent of the people surveyed relied on television as their primary source of election information); David Ho, *Poll Finds Americans Turn Away from Traditional News Sources*, The Deseret News, at WEB (Feb. 6, 2000) (discussing how despite a decline, three quarters of people surveyed still relied on television for recent presidential campaign coverage).

A political campaign is an exorbitant expense for any candidate, federal and state alike. And as reported by Common Cause, "[a]n enormous amount of [campaign funding] goes straight into the pocket of broadcasters." Common Cause Report, *supra* note 16. In fact, television is one of the single largest campaign expenses.¹⁸ The Television Bureau of Advertising estimates that TV broadcasters alone will take in \$600 million in the 2000 election year. Albinia, *supra* note 16. This is an increase from the \$447 million combined radio and television ad spending in the 1996 election. *Id.* Many qualified candidates, however, cannot afford to purchase time on television, thereby depriving the public from exposure to a number of diverse candidates. *See Advisory Committee Report* at 56. This lack of access and the resulting dearth of choice are obstacles that strike at the core of informed self-governance. *See* Common Cause Report, *supra* note 16. A free time requirement would help to break this cycle by allowing more candidates to express their views to the public and by increasing citizen's choice. As the Advisory Committee notes, "[e]ngagement with serious issues can be educative; it can increase citizen involvement in political issues; it can make citizens better able to choose." *See Advisory Committee Report* at 57. Not only would free time make for better democracy, it is well within the Commission's authority to require it. *See FCC v. League of Women Voters of Calif.*, 486 U.S. 364, 375 (1984); *see also Comments of the Alliance for Better Campaigns*, submitted in this proceeding.

Interested groups have already submitted recommendations for political free time to the Commission. For example, the Separate Statement of Benton *et al.*, in a part joined by the

¹⁸ *See, e.g.,* Kevin Taglang *Digital Beat Extra, Television: Super Tuesday's Big Winner* (Mar. 7, 2000) (discussing that the race for the open Senate seat in New York will cost an estimated \$45 million with 80% of the spending going to television ad buys; eleven governors' races will cost an estimated \$3-20 million with 70% of the budget going to broadcast media).